

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
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U.S. DISTRICT COURT  
DISTRICT OF MASS.

ZONEPERFECT NUTRITION COMPANY

Plaintiff and Defendant-in-Counterclaim,

v.

HERSHEY FOODS CORPORATION,  
HERSHEY CHOCOLATE &  
CONFECTIONERY CORPORATION,  
BARRY D. SEARS, and ZONE LABS, INC.,

Defendants and Plaintiffs-in-Counterclaim.

CIVIL ACTION  
NO. 04-10760-RGS

**ASSENTED-TO EMERGENCY MOTION TO AMEND  
EXISTING SCHEDULING ORDER**

Plaintiff and Defendant-in Counterclaim ZonePerfect Nutrition Company ("ZonePerfect"), with the assent of defendants and plaintiffs-in-counterclaim Hershey Foods Corporation, Hershey Chocolate & Confectionery Corporation (collectively "Hershey"), Barry D. Sears ("Sears"), and Zone Labs, Inc. ("Zone Labs"), hereby moves that the existing scheduling order be amended to make all submissions currently due on Thursday, July 1, 2004 now due on Tuesday, July 6, 2004. As reasons therefor, ZonePerfect states as follows:

1. Late last week, ZonePerfect's lead counsel, Daniel Goldberg, was unexpectedly called away to attend to a dire medical emergency in his family. Mr. Goldberg is still attending to those issues at present, and will be occupied with them for some time.

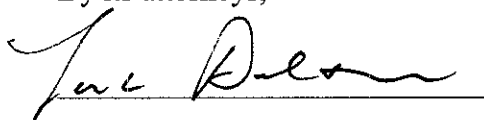
2. Because of his absence, ZonePerfect requested that the defendants agree to move the Thursday July 1, 2004 deadline for submission called for by the current scheduling order ("proposed findings of fact and conclusions of law, affidavits of the direct testimony of party witnesses, supporting affidavits of other witnesses, deposition excerpts (to the extent available), exhibits, and any other supporting materials") to Tuesday July 6, 2004.
3. The existing scheduling order provides that on July 7, 2004, the parties identify which portions of any adverse party's proposed findings of fact that they dispute and identify which party witnesses they propose to cross-examine at trial. This deadline will be impacted by the requested extension referred to in paragraph 2 above. The parties intend to raise with the Court at the conference on July 1 the appropriate timing for the filing of the information currently due on July 7, 2004.
4. Counsel for all defendants assented to this request.

WHEREFORE, ZonePerfect requests that the existing scheduling order be amended to make all submissions currently due on Thursday, July 1, 2004 now due on Tuesday, July 6, 2004.

Respectfully submitted,

**ZONEPERFECT NUTRITION COMPANY**

By its attorneys,

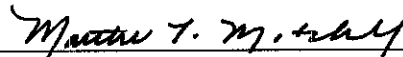


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Dated: June 28, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served upon counsel for each defendant via facsimile and by mail to Ms. Arrowood, Mr. Adio and Mr. Smart this 28th day of June, 2004.



Matthew L. Mitchell